



# Benchers' Bulletin

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## President's View

### *Benchers' Bulletin*

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities.

The views of the profession on improvements to the *Bulletin* are always welcome – please contact the editor.

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## What's the future of the small firm lawyer?

by Ralston S. Alexander, QC

It's time for one urban myth to die. Despite what you may hear, read or think, the Benchers are not all big-firm lawyers. Most private practice Benchers are in small or smallish firms, and several are sole practitioners. For that reason, we have a stake in the future of small-firm practice.

Just over 50% of BC's lawyers practise in firms of between one and five lawyers. If you are of that number, take pride. Small-firm lawyers are, and have always been, the backbone of the profession. For most people who need legal help, you are the very face of lawyers in the community.

At the annual Bencher retreat in June this year, thanks to the leadership of First Vice-President Rob McDiarmid, QC, we devoted our time to small-firm practice, its challenges and its future.

When the Benchers first turned to scrutinizing small firms, we weren't being entirely altruistic (or even self-centred for that matter). We have a responsibility to regulate lawyers and to do what is necessary to help them meet the demands of practice.

In many ways, lawyers in small firms carry more complex responsibilities than lawyers in bigger firms. For one thing, they often assume greater administrative responsibility for their firms. They may also serve a wider variety of clients of varying means and differing expectations and offer those clients a range of services. These include services in family law, an area charged with high emotion and conflict. Law Society complaints, discipline citations and practice standards programs involve a disproportionate percentage of solo or small firm lawyers, and family law practice is certainly a contributing factor.

Let me pause to say that the great majority of small-firm lawyers excel in their practices and cause the Law Society no greater concern than any other

segment of the bar. I don't want to be accused of using statistics like a drunk uses lampposts — for support and not for illumination. In fact, our number-crunching shows a bare 1% of BC lawyers aren't coping at all well in practice and hence become frequent flyers at the Law Society. Some of those may well have defaulted into marginalized solo or small practices for which they were ill-prepared, possibly because they had no other options. This is a problem, and one the Benchers take seriously.

It's a far different story for the great majority of small-firm lawyers. They have chosen small-firm practice and find it both rewarding and fulfilling. These lawyers are passionate about their work. Even so, some see the Law Society as making their lives harder by ignoring their needs.

At several of the county bar meetings I have attended so far this year, lawyers have requested that the Law Society direct some additional resources to assist small-firm practitioners. There is universal praise for our staff members who are providing practice advice. Felicia Folk, Jack Olsen and Dave Bilinsky are widely acclaimed and universally loved by the membership. However, they are apparently spread too thin, and some lawyers have experienced (uncomfortable) delays looking for assistance.

I think it safe to say, following our weekend retreat, that the Benchers agree that some significant additional assistance ought to be provided to small-firm lawyers. We reflected on some specific problems they face:

- trouble accessing continuing education;
- trouble "specializing" and instead feeling the need to accept all work that comes in the door;
- difficulty with vacation planning

and with file coverage in emergency situations;

- trouble attracting associates;
- difficulty planning for an orderly retirement because of the nature of their practice;
- facing an unstated prejudice against members of small firms, where the size of the firm is perceived to be indicative of a diminished quality of work;
- problems of loneliness and isolation and, sometimes, a tendency to become reclusive. This tendency is manifested in a reluctance to reach out to colleagues for help.

Thanks to work in other Canadian jurisdictions (Ontario, Manitoba and Saskatchewan), I offer some preliminary thoughts on helping BC lawyers in small firms. I say these are preliminary thoughts because we still have much to learn about this important segment of the bar and I want to encourage your feedback.

First, I think we need to establish a

committee that will devote its entire attention to small firms. The committee would benefit from the leadership of Benchers in small firms and, like all Law Society committees, would be assisted in its work by the addition of several non-Bencher members, also from small firms. Without question, we would need your input.

Through the committee we should explore ways to enhance the work that is done by our practice advisors. It may be that some additional staff will be required — we should find out if that is the case. We should also explore methods for providing those advisors with better support, both in terms of staff and technology. We may not be maximizing their ability to assist lawyers in need.

We need to devote more time to developing resources on the Law Society website specifically directed to small firms, including precedents, hardware and software information, a mentoring network and locum resources. This is an efficient medium for distributing targeted information to those

who will seek to access it.

Another need is a series of continuing education courses directed to the particular nature of the practice of law from a small firm. These courses would be less about the nuances of the law and more about methods for the effective delivery of legal services in a profitable yet cost-effective manner. Office systems, bookkeeping approaches, staffing strategies and the like are some possible areas of attention. One suggestion is that all lawyers establishing new practices be required to attend and pass a Law Society-sponsored course on trust account rules compliance.

What I really need is to tap into the profession to see what is on your mind on this issue. Let this column serve as a first step.

*Can you tell me what's right and what's wrong in small firm practice today? How can the Law Society best help you to succeed in your practice? Let me hear from you. I am at [ralexander@lsbc.org](mailto:ralexander@lsbc.org).* ✧

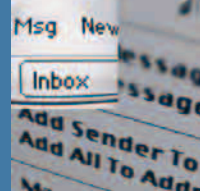


## Golden moments

*Paula Ramsay is congratulated by President Ralston Alexander, QC on receiving the 2005 Law Society gold medal, a recognition of her accomplishments as top law graduate over the three years of the LLB program at the University of Victoria. The presentation took place during a faculty reception that followed convocation in June. Ms. Ramsay will begin articles with Arvay Finlay in Victoria later this summer.*

*The gold medallist for the University of British Columbia Faculty of Law this year is Jesse Nyman (not pictured) who is beginning articles at Caley Wray Labour Lawyers in Toronto.* ✧





## Civil reform deserves consultations and independent review — Benchers

*The Law Society has written to the Civil Justice Reform Working Group — part of the BC Justice Review Task Force — to advocate a comprehensive study of civil law reform in BC. The Task Force issued a Green Paper on civil justice reform in the fall of 2004 and appointed a working group to report out by the end of 2005. The Benchers believe that civil law reform is important and therefore merits significant time and resources. They are asking the Task Force to entrust this project to an independent body experienced in research and analysis, such as the BC Law Institute, and to provide proper funding to carry out that research, including in-depth public consultations.*

In September 2004, when then Attorney General Geoff Plant, QC announced creation of the Civil Justice Reform Working Group as part of the BC Justice Review Task Force, he asked a pivotal question: “Is there a better way for the BC civil justice system to resolve disputes?”

That question was central to the Task Force’s 13-page *Green Paper on the Foundation of Civil Justice Reform* which calls for fundamental, comprehensive reforms and broad, innovative thinking and, to sum it up, “more than tinkering.”

The Working Group on Civil Justice Reform was given 15 months to complete its study and make its final report and recommendations by the end of 2005.

The Benchers prefer the broad-brush approach to civil justice reform over a piecemeal approach. It also appears critical to meeting the different interests, problems and expectations of the many stakeholders in the civil justice system.

Because civil reform is so important, the Benchers are asking the BC Justice Review Task Force to entrust this project to an independent body, such as

the BC Law Institute, with experience in research and analysis. And proper funding must be part of the plan, to allow for research and for in-depth public consultations.

“Successful reform must start from a thorough analysis of the existing system, what it is currently delivering, and how it operates,” the Benchers note in their submission. “Any analysis should include a review of short and long-term considerations and solutions set in the context of the differing objectives of the parties involved.”

The Law Society recommends research on the types of disputes entering the system, their monetary value, the parties involved, outcomes, length of time and the costs to litigate civil claims.

The working group has consulted with select community groups on the Green Paper, but the Law Society wants to see broader consultation and discussion to ensure public engagement.

As civil reforms are proposed, they need to be articulated in detail, the Benchers have urged. There have been no proposals for consultation so far. In the government’s administrative justice review, by contrast, papers were issued on specific administrative law reform proposals. The Benchers support that approach to consultation.

While the Green Paper invites a rethinking of the entire paradigm of civil justice, the government has already introduced a number of reforms in the courts, including several pilot projects set to begin September 1, 2005.

The Law Society is asking for a thorough evaluation of these pilot projects and their effectiveness in reducing costs, promoting earlier settlements and increasing access to justice.

If the primary objective of civil justice reform is to improve meaningful

access to justice, more needs to be done than merely altering dispute resolution mechanisms or making changes to court-based processes. “For many individuals, it is their lack of knowledge or understanding about the possibility of pursuing their rights or redress that prevents them from participating in the civil justice system at all,” the Benchers have stated in their submission, adding that these needs must be addressed.

While the Law Society agrees that the parties to certain types of disputes (for example, many family law matters) are often better served by a non-adversarial approach, a rights-based adjudication process must continue to be available for the proper functioning of the legal system.

As civil justice reforms come under review, the Society flagged some matters for further consideration:

- support for lawyers to focus on the essential facts, documents and law to determine the critical issues in a case, without needing to take full advantage of every element of process available or plead every conceivable cause of action or defence in order to advance or defend a client’s case;
- measures against vexatious litigants whose cases have no merit, as well as with vexatious agents;
- options for waiving, reducing or deferring court fees in *pro bono* matters;
- an analysis of how the courts’ infrastructure and administration might be improved or better resourced;
- an evaluation of ADR processes with a view to matching different dispute resolution mechanisms to different dispute types;



- creation of a unified family court;
- use of judicial case conferences in most civil cases;
- a look at how collaborative law could be used effectively for appropriate non-family, civil law matters;
- identifying and removing barriers to the civil justice system for people with physical, mental and developmental disabilities;
- modifying the court calendar system to allow for the same judge to hear all pre-trial motions in a single matter. ✧

## Comment invited on proposed family law reform

On June 9 the Family Justice Reform Working Group released *A New Justice System for Families and Children*, recommending changes to the family justice system to make it more accessible, effective and oriented to the needs of children and families.

The working group was appointed by the Justice Reform Task Force, which includes representatives from government, the courts and the legal profession.

The working group advocates a move from adversarial to cooperative approaches in the resolution of family law disputes. Among its key recommendations are:

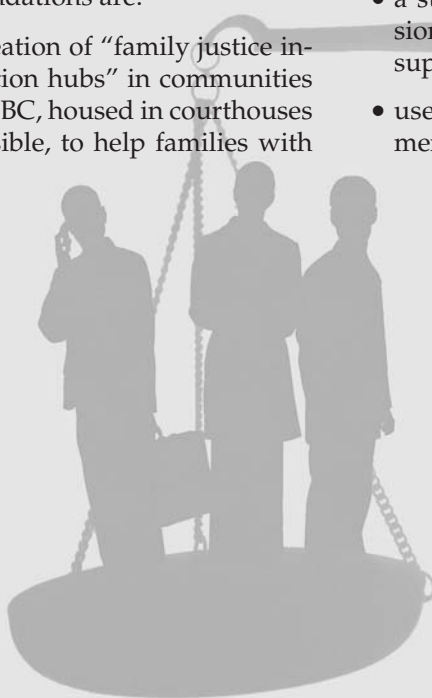
- the creation of “family justice information hubs” in communities across BC, housed in courthouses if possible, to help families with

information, needs assessments and referrals;

- a unified family court, with adequate resources responsible for all areas of family law, and judges specialized in family law and court procedures;
- coordination and integration of family law administrative and support services, whether or not a unified family court is attainable;
- a mandatory dispute resolution session in most cases before clients take a first contested step in a court process;
- a subsidized first mediation session and use of court fees to help support front-end services;
- use of costs to promote settlement;

- additional services for high-conflict families;
- legal representation for low and middle-income people who are formalizing agreements reached through consensual dispute resolution;
- Law Society guidance to lawyers on balancing their role as advocate with other interests, including those of children;
- simpler court rules, less formal hearings and use of online forms.

The Task Force welcomes comments on *A New Justice System for Families and Children* and any of the report recommendations. You can find the report on the Task Force website at [www.bcjusticereview.org](http://www.bcjusticereview.org). ✧



## Lawyers not to accept \$7,500 or more in cash trust deposits

At their June meeting, the Benchers amended Law Society Rule 3-51.1 and related rules to stipulate that BC lawyers must not accept \$7,500 or more in cash (down from the previous limit of \$10,000 or more) in any one client matter or transaction.

Last year the Law Society of BC became the first law society in Canada to adopt a limit on trust funds that lawyers can receive in cash. This step demonstrated the legal profession's commitment to guard against lawyers' trust accounts being used in money laundering or fraudulent schemes.

It is critical for the legal profession across Canada to put in place strong anti-money laundering provisions. This is so because lawyers are the only professionals in the country who are exempt from the mandatory reporting to the federal government of large cash deposits and suspicious transactions.

The exemption has been in place since 2001, first by virtue of interim court injunctions to protect solicitor-client privilege, and then by agreement of the federal government pending final

disposition of the issue in court. As noted in the President's View in the April-May *Benchers' Bulletin*, the Federation of Law Societies of Canada is continuing discussions with government to resolve the issue and come to a long-term solution. The trial respecting the applicability of the money laundering legislation to lawyers has been adjourned so that the Federation and the federal government can pursue settlement options.

Because of the importance of preventing money laundering activities, and the likelihood that money launderers see lawyers as a desirable target, law societies and lawyers across the country must be on guard.

The Federation of Law Societies proposed a model rule to limit cash receipts for consistency across the country. BC's provisions, as most recently revised, reflect the model rule.

BC lawyers are accordingly prohibited from accepting an aggregate amount of \$7,500 Canadian or more in cash in one client matter or transaction, *other than* from a law enforcement agency; pursuant to a court order; from a financial institution or

public body; to pay a fine or penalty; or (when acting as in-house counsel) on behalf of one's employer. A lawyer is also permitted to receive \$7,500 or more in cash for professional fees, disbursements, expenses or bail.

If a lawyer receives a cash retainer and subsequently refunds all or part of it, any refund of \$1,000 or more must also be in cash. The intent of this provision is to dissuade any person from purporting to provide a lawyer with a large cash retainer and later demanding it be refunded in the form of a trust cheque. A person might do this to obtain a negotiable instrument (the trust cheque) from a lawyer that would not trigger reporting requirements when that person deposits it in a financial institution.

The Law Society requires lawyers to record the source and form of all funds received (Rule 3-60) and to keep records of all cash receipts and of any cash withdrawals (Rule 3-61.1).

The revised rules can be found on the Law Society website and in the enclosed *Member's Manual* amendment package. ✧

## BC lawyers approve 2006 practice fee

In a referendum held June 22, BC lawyers voted (3,048:769) to set the 2006 practice fee at \$1,065.50, as recommended by the Benchers. This represents approval of the fee by 79.9% of voters.

The 2006 practice fee includes four components: 1) a Law Society General Fund fee of \$825, 2) a BC Courthouse Library Society fee of \$160, 3) a Lawyers Assistance Program (LAP) fee of \$53 and 4) an *Advocate* subscription of \$27.50.

The practice fee does not include a

CBA fee or fee equivalent. In the fee referendum last year, a majority of the profession approved a fee without a mandatory CBA fee component. The Benchers respected this decision of the profession that the CBA fee should be voluntary, not mandatory, and did not include it in the 2006 practice fee resolution.

The Benchers will set the 2006 Special Compensation Fund assessment and Lawyers Insurance Fund fee this fall. Beginning in 2003, the Benchers increased the Special Compensation Fund assessment to \$600, because of

increased claims and investigation costs relating to the practice of Martin Wirick.

While Special Compensation Fund claims costs have increased significantly, the Benchers have elected to finance these over a number of years, having regard both to the stability of the Fund and the interests of BC lawyers. Accordingly, no further Special Compensation Fund assessment increase is currently projected for 2006. The Lawyers Insurance Fund fee is expected to remain at \$1,500 in 2006, for the sixth year in a row. ✧





*Lawyers may be asked to attend an informal “conduct meeting” to address minor misconduct*

## Discipline Committee to be given new conduct options

On recommendation of the Conduct Review Task Force, the Benchers have passed rules to allow the Discipline Committee to order a “conduct meeting” with a lawyer — an informal process to address conduct problems that are not sufficiently serious to merit either a formal discipline hearing or a conduct review.

When considering a complaint, the Discipline Committee has always had authority under the Rules to:

- take no further action;
- order a conduct review, in which the lawyer meets with two Benchers (or a Bencher and another senior lawyer) to discuss the conduct in question; or
- recommend a citation against the lawyer, leading to a formal discipline hearing.

For complaints that do not merit a discipline hearing but need to be addressed, the Committee often refers the lawyer to a conduct review.

In its initial report to the Benchers in May, the Task Force acknowledged that the purpose of the conduct review includes “ensuring that the lawyer understands why what he or she has done has resulted in a meeting with two benchers and ensuring that corrective measures are discussed in order to avoid having a repeat of the impugned conduct.”

Unlike a discipline hearing, which is a formal public hearing relating to more serious types of conduct and can lead to imposition of a penalty, a conduct review is intended to be educational and informal and not punitive in nature.

The Task Force, however, recommended that the Discipline Committee have additional options for addressing less serious misconduct

than might be appropriate for a conduct review

### Conduct letter from the Chair — practice recognized in Rules

When addressing a complaint involving minor misconduct that warrants neither a conduct review nor a citation, the Discipline Committee often asks the Committee Chair to write to the lawyer. This is an opportunity for the Committee to express its concerns and remind the lawyer of his or her professional obligations. This practice, endorsed by both the Task Force and the Benchers as a whole, is known as “conduct letter from the chair” and is now reflected in a new Law Society Rule (4-6.1).

### The “conduct meeting” — a new option

The Benchers have also embraced the recommendation for a new and less formal option than the conduct review. This new process will be called a conduct meeting: see Rules 4-1, 4-4 and 4-6.2. Although a conduct review is an informal procedure and designed to help a lawyer avoid future conduct problems, the review results in a written report to the Discipline Committee and forms part of a lawyer’s professional conduct record. As such, the fact of a conduct review and the resulting report can be considered by any future discipline hearing (on consideration of penalty).

Unlike a conduct review, a “conduct meeting” will not form part of a lawyer’s professional conduct record.

Task Force Chair Ian Donaldson, QC told the Benchers that the Discipline Committee would be expected to refer relatively minor conduct matters to a conduct meeting, those matters that should not form part of a lawyer’s

conduct record. A conduct review could be reserved for more serious indiscretions.

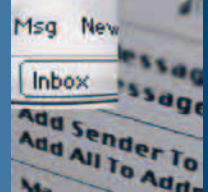
### Conduct reviews improved

The Benchers have also approved several recommendations of the Task Force on ways to improve conduct reviews. There will now be more expansive minutes on a Discipline Committee decision to order a conduct review, which can be provided to the lawyer in preparation for the review. As well, more information on the conduct review process will be available to all members of the public via the Law Society website and to interested complainants through Law Society correspondence and at the conduct review itself, if the complainant is permitted to attend a portion of a review.



The Conduct Review Task Force was appointed in October 2003 to examine the conduct review process, including its procedural fairness and to make any recommendations it considered necessary for improvement. Originally chaired by Peter Keighley, QC prior to his appointment as a Master of the Supreme Court in 2004, the Task Force was subsequently chaired by Mr. Donaldson, and is composed of Benchers Michael Falkins and Robert McDiarmid, QC (since 2005), Life Benchers William Everett, QC, Russell Tretiak, QC and Jane Shackell, QC and Vancouver lawyer Ian Sissett.

For more information on conduct letters, conduct meetings and conduct reviews see Rules 4-1 through 4-10 as revised, on the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca). These rules will be included in a future *Member’s Manual* amendment package. ✧



## Women in the Legal Profession – new initiatives explored

The Women in the Legal Profession Task Force will explore several new initiatives in 2005 to help women lawyers in BC.

In a presentation to the Benchers in May, Task Force Chair Gavin Hume, QC set out a proposed work plan that would keep the Task Force busy through to the end of 2005. There are several initiatives the Task Force plans to pursue immediately, in particular a revision of the model workplace policies offered to law firms and posted on the Law Society website. The Task Force is also interested in enhancing publicity for the Equity Ombudsperson program and a review of staffing requirements on equity initiatives.

The Law Society's equity studies of the early 1990s showed that BC women lawyers were leaving the profession in disproportionate numbers to men and

that many women faced discrimination in the practice of law, difficulties accommodating work and career responsibilities and barriers to career advancement.

More recent equity studies from across Canada and in the United States reveal that these problems persist for women lawyers. The Task Force has drawn from these studies possible approaches for BC and has conducted a survey of other law societies and bar associations about their experiences, good and bad, with their equity programs. For background on the work of the Task Force, see the April-May *Benchers' Bulletin*.

From its look at programs in other jurisdictions and requirements unique to BC, the Task Force has identified additional initiatives it plans to explore further, with a view to making recommendations by year-end:

- an exit survey for BC lawyers to ascertain their reasons for leaving the profession;
- a comprehensive mentoring program to offer guidance and support to students and newly called lawyers; and
- a parental/maternity leave insurance program for sole practitioners.

The Task Force will also study a program of the Bar Association of San Francisco called the "No Glass Ceiling" initiative in which law firms choose to make a public commitment to supporting women lawyers, such as by having at least 25% of those at the partnership level being women and retaining men and women lawyers at approximately equal rates. ✧

## Volunteers invited to update model workplace policies

From Gavin Hume, QC, Chair, Law Society Women in the Legal Profession Task Force



Gavin Hume, QC

The Women in the Legal Profession Task Force invites lawyers to volunteer their help in revising the Law Society's model workplace policies.

The Law Society offers a number of model policies designed to help law firms achieve equity and diversity in the workplace. The Practice Support section of the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca) currently features model policies on:

- privacy
- privacy for employees of a law firm
- workplace harassment
- maternity and parental leave
- alternate work arrangements
- workplace equity
- gender-neutral language.

Most of these policies were drafted in the early 1990s, and the Law Society is seeking lawyers with experience and expertise in relevant fields to volunteer their time to update the

policies and to help the Task Force identify any other policies that may be suitable for distribution.

If you are interested in assisting in this project, please contact Kuan Foo, Policy and Legal Services staff lawyer, at the Law Society office at 604 443-5727 or [kfoo@lsbc.org](mailto:kfoo@lsbc.org).

The Women in the Legal Profession Task Force, which is overseeing this project, would like to thank in advance all those who offer their assistance. The Task Force helps the Benchers on issues relating to women in the profession. ✧





## Updates to the Rules and Handbook

These are some recent highlights of amendments to the Law Society Rules and *Professional Conduct Handbook*. The text of all revised rules and a synopsis of the changes are included in the *Member's Manual* amendment package enclosed in this mailing and in the Publications & Forms section of the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca).

### Law Society Rules

The Law Society may disclose restrictions and conditions of practice that are imposed on lawyers in credentials or disciplinary hearings, and may continue to disclose restrictions or conditions concerning areas of law limitations, even if they result from non-public processes (Rules 2-26.1(1), (5) and (6), 3-3(2) and (3.1), 3-16(1), (4) and (5), 3-46(7) and (8), 4-38.2 and 9-11(7) and (8)).

A lawyer may not receive in cash \$7,500 or more (the previous threshold

was \$10,000 or more) in any one client matter or transaction, a provision that remains subject to certain exceptions (Rule 3-51.1(3)). For more on the rules respecting receipt of cash, see page 6.

All lawyers who fail to report an unpaid judgment and to provide a proposal for satisfying the judgment are subject to discipline (Rules 3-44(4) and 3-46(3)). These amendments are for clarification and to ensure the provisions apply to both solvent and insolvent lawyers.

The Discipline Committee is authorized to make any investigation it considers desirable when a matter is referred to it under Division 6 ("Financial Responsibility"), including matters involving a financially solvent lawyer (Rule 3-46(1) and (6)).

The Executive Director has discretion to publish a notice of a custodianship order and the reasons for it if publication is in the public interest (Rule 6-5).

### Professional Conduct Handbook

Appendix 3 of the *Handbook* on "Real Property Transactions" reminds lawyers of their obligations in Chapter 6 with respect to acting jointly for clients (Appendix 3, paragraph 2.1).

A transaction is not considered to have a commercial element that disqualifies it as a simple conveyance merely because one of the parties is a corporation (Appendix 3, footnote 1). The Benchers considered but decided against making any changes to section 5(g) of the Appendix; that section provides that a construction mortgage advanced in stages is not to be considered a simple conveyance.

There are small revisions to Chapter 4, Rule 6 so that the heading now reads "Dishonesty, crime or fraud of client" ("of client" added) and the footnote to the rule places an obligation on a lawyer to "make enquiries" rather than to "be wary." ♦

## Hearing panel rules reviewed

The Benchers will consider rule changes in the fall on the composition of hearing panels.

In June the use of single-Bencher panels for hearings came under review. Rule 5-2(3) permits a hearing panel to consist of one Bencher who is a lawyer, provided the respondent lawyer or applicant consents in writing. While one-Bencher panels can sometimes prove more expedient and less expensive to administer, there are other considerations. In some cases the hearing can prove a burden for one Bencher to assume.

As well, in some instances defence counsel have enquired about the composition of panels in advance,

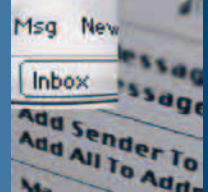
apparently for the purpose of predicting which of three Benchers would most likely remain on the panel if it were reconstituted as a single-Bencher panel. If requests from counsel for a single-Bencher panel are routinely permitted, they may be perceived as influencing the panel composition.

Another disadvantage of single-Bencher panels is that they curtail the involvement of Lay Benchers in hearings since Lay Benchers cannot serve on single-Bencher panels. The Benchers have now endorsed in principle that Lay Benchers should be appointed to hearing panels whenever possible, that the quorum for Bencher

reviews should always include one or more Lay Benchers and that Life Lay Benchers should be permitted to sit on hearing panels.

In their discussion, the Benchers agreed that three-Bencher hearing panels should be the norm for hearings, and that single-Bencher panels should be reserved for special circumstances. They took note of the fact that law societies in other provinces do not appoint single-Bencher panels, with minor exceptions in one jurisdiction.

The Benchers will look further at the circumstances in which such panels are appropriate when considering rule changes in the fall. ♦



## In memory



Robert Gourlay, QC

The Benchers and staff of the Law Society wish to express their great sadness over the passing of Life Bencher, Robert W. Gourlay, QC, on June 16 and to offer their condolences to Rob's wife, family and friends and to his colleagues.

A respected trial lawyer, Rob's devotion to his profession was profound, as reflected in his extensive service commitments over the years, including as President of the BC Branch of the Canadian Bar Association from 1992 to 1993 and as a Bencher of the Law Society for eight years from 1996 to 2003.

He will be deeply missed by all who were honoured to know him. Hundreds of his colleagues and friends paid tribute to his life at a special sitting of the court held June 24 in Vancouver.



Lilian To

Another loss to all within the Law Society came with the passing of Lay Bencher **Lilian To** on July 2. The Benchers and staff offer their condolences to her family, friends and colleagues and to the many people in the community who have benefited from her generosity over the years.

Since 1988 Lilian was executive director of the United Chinese Community Enrichment Services Society (SUCCESS).

A Lay Bencher since 2003, Lilian was a member of the Equity and Diversity Committee (2004-05), the Unauthorized Practice Committee, the Discipline Committee (2003) and the Complainants' Review Committee (2004). Michael Falkins, on behalf of all the Lay Benchers, conveyed regrets at losing their colleague so early in life. "She was a dynamic lady with an illustrious career," he said.

SUCCESS plans to hold a public celebration of Lilian's life in September. ✧

## New Executive Director at Pro Bono Law of BC

Pro Bono Law of BC is pleased to announce that **Jamie F. Maclaren** has joined the Society as its new Executive Director.

Mr. Maclaren, formerly with Harris & Company of Vancouver, has long been

involved in pro bono service. He has served as a director of the Community Legal Assistance Society and Executive Director of the UBC Law Students' Legal Advice Program (LSLAP) and has himself provided pro bono legal advice and representation to clients in

Vancouver's Downtown Eastside.

In addition to his new role at PBLBC, Mr. Maclaren continues to serve as a supervising lawyer for LSLAP, overseeing the work of law students at a Vancouver clinic. ✧

## Appointment

**Arlene Henry** has been reappointed to the Vancouver Building Permit Board

of Appeal for a further three-year term beginning July 1, 2005. The Law

Society appoints one member of the Board. ✧



## \$12,000 Law Society Scholarship

The \$12,000 Law Society Scholarship encourages and financially assists a law graduate to complete a full-time program of graduate legal studies that will benefit the student, the province and the legal profession in BC.

Graduating law students and law graduates of the University of British Columbia and the University of Victoria are eligible to apply for the scholarship, as are other law school graduates who can show a real or substantial connection to BC. Applicants must demonstrate outstanding academic and other qualifications.

The Benchers award the Law Society Scholarship on recommendation of the Credentials Committee.

### Criteria for selection

In reviewing applications, the Credentials Committee takes into consideration each applicant's:

- academic standing;
- positive social contributions, such as volunteer work;
- intention to practise in British Columbia after completing graduate studies;
- financial need; and
- importance or significance of the proposed graduate work.

### How to apply

An eligible applicant may apply by submitting:

- a letter of application setting out the details of his or her academic



Vancouver lawyer **Kimberly M. Eldred** savours a proud moment and congratulations from President **Ralston Alexander, QC** on being the Benchers' choice for the \$12,000 scholarship for graduate legal studies. A graduate of UBC law school in 1998, Ms. Eldred clerked at the Supreme and Territorial Courts of Yukon Territory and completed articles at Borden Ladner Gervais. After her call to the bar in BC and the Yukon in 2000, she practised first as a staff lawyer with the Yukon Legal Services Society then as a lawyer in a small-firm criminal practice in Vancouver. She begins the Masters of Law program at Harvard Law School this fall and plans to focus her research on the protection of the legal rights of persons implicated in international criminal investigations and prosecutions.

career to date and proposed plans for graduate study;

- official transcripts of academic institutions attended; and
- three letters of recommendation: one letter from the Dean of the law school from which the applicant graduated or is about to graduate and two letters from professors of that law school.

Applications for the 2006 scholarship, including all supporting documents, must be received by **December 15, 2005**. Please direct enquiries and applications to:

Lesley Small  
 Manager, Credentials & Licensing  
 Law Society of British Columbia  
 800 – 845 Cambie Street  
 Vancouver, BC V6B 4Z9. ✧

## Correction re: Alexander Jeletzky

In May 2005 the Law Society mistakenly notified members that Alexander Jeletzky had voluntarily ceased practice as of January 1, 2004.

This notification was mistaken and

Mr. Jeletzky at no time ceased practice. Mr. Jeletzky remains and has at all times been a member of the Law Society in good standing since his call and admission on June 26, 1974.

The Law Society regrets its error and sincerely apologizes to Mr. Jeletzky for any embarrassment and aggravation this error has caused him. ✧



## No-cost fee mediation — could it help you and a client?

The Law Society offers an informal fee mediation service as an alternative to a fee review.

The fee mediation program is now available at no cost to either lawyer or client and is voluntary. It is an accessible and less formal way of resolving a fee dispute and can be an attractive option for lawyers and clients.

Either the lawyer or client can request a mediation by completing and submitting an application to the Law Society. After checking to see if both are agreeable to mediation, the Society will appoint an independent, neutral mediator from its roster. The fee mediation roster is made up of lawyer and non-lawyer mediators who receive a very small honorarium from the Society for conducting a mediation. The views of the lawyer and client who will participate in the mediation are taken into consideration on selection of the mediator.

Once appointed, the mediator will independently contact the lawyer and client to arrange a mediation of up to three hours. The form of mediation — such as face-to-face discussions or telephone meetings — will be up to the mediator and participants. The mediator will encourage the lawyer and the client to explore their interests, develop and consider potential options for resolution based on those interests and try to reach a mutually agreeable resolution.

The Law Society is advised whether or not the mediation is successful for the purpose of monitoring the program overall.

The mediation is on a “without prejudice” basis. This means that anyone who agrees to participate in the program admits nothing more than a willingness to participate and any negotiations during the fee mediation process cannot be used in evidence in any subsequent proceedings, including a court proceeding or fee review by



a Registrar of the Supreme Court of BC.

**Participation in the fee mediation program is entirely voluntary.** Neither the client nor the lawyer is in any way obliged to participate and either can withdraw from the mediation at any time.

Because the results of a fee mediation are not binding on the parties, fee review remains open after fee mediation if either party wishes to pursue it, provided the matter has not been settled

and the time limit for applying for the review has not expired. The fee mediation service is only available if the fees have *not* already been subject to a fee review.

If you are interested in learning more or making an application for a mediation, please contact the Law Society. The fee mediation application form is available on the Law Society website: see “Lawyers’ fees / resolving disagreements” in the “Public” section at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca). ✧



## Confirm instructions in writing

Making notes of conversations with clients and sending letters to clients to confirm their instructions is a wise practice and may be the only defence against a “he said, she said” situation. Skipping these steps on a file can lead to unhappy consequences, impairing your ability to respond to complaints or claims of negligence.

The Law Society often sees problems arising from miscommunications or misunderstandings between lawyers and their clients, such as what steps the lawyer will or will not take next on the client's file.

In one case before the Complainant's Review Committee last year a client complained to the Law Society that his lawyer had agreed to dismiss the

client's personal injury action by consent, but the client denied having given instructions to do this.

In that case ICBC had filed an application under the *Workers Compensation Act* to dismiss the client's action after WCB had determined that the client was working at the time of the accident. It was clear on the file that the personal injury claim could not proceed and that the dismissal was appropriate. The lawyer said that he had discussed the matter at length with the client and obtained consent to the dismissal.

The lawyer, however, had not made notes of his instructions from the client, did not send a letter to the client confirming the instructions, did not

copy the client with his letter to defence counsel agreeing to the dismissal and did not send the client a copy of the dismissal order. In the view of the Complainant's Review Committee, the lawyer may have been able to avoid the complaint altogether had he confirmed instructions in writing.

Accordingly, in terms of “best practices,” it is recommended that lawyers send copies of all correspondence (both incoming and outgoing) to their clients as well as written summaries of instructions received orally from clients. In this way there is a clear written record of the steps that the lawyer is (or is not) to take on the client's behalf. ♦

*For more information and to register, see the flyer enclosed in this mailing or visit [www.pacificlegaltech.com](http://www.pacificlegaltech.com). Register before the early-bird deadline of **September 16, 2005** for the registration fee of \$295 (+ GST) and save \$100!*

## Pacific Legal Technology Conference is coming October 14

The third Pacific Legal Technology Conference will take place on **Friday, October 14, 2005** in Vancouver. Participants can look forward to learning about the effective use of technology in law firms today and choose from 25

hours of practical sessions targeted to lawyers, legal administrators, IT professionals, researchers, legal assistants and staff. These include sessions on:

- Getting rid of the paper — scanning and living with e-files

- 30 hot tips, gadgets and insights you can't be without
- Electronic tools for the rest of us: using technology for fun and profit
- E-filing and e-searching in the courts, the LTO and the Corporate Registry
- Personal knowledge management — the latest developments
- How to protect yourself and your client's confidences in an insecure world
- Adding value to legal services via technology.

As a Conference participant, you will enjoy an electronic mock trial based on the Air India case, software displays and presentations, a sit-down luncheon with colleagues and a CD-ROM with all the Conference papers. Don't delay, register now! ♦







## Unbundling legal services – lawyers share their views

On May 7 the Law Society hosted a consultation with lawyers and community representatives in Vancouver on the “unbundling of legal services.” Briefly stated, “unbundling” legal services means lawyers offering clients the option of certain defined legal services, instead of legal representation on all aspects of a transaction, dispute or process.

This was the first of several consultations planned this year by the Task Force on Unbundling Legal Services, chaired by Bencher Grant Taylor, QC. The challenge ahead is to evaluate whether unbundled legal services might benefit the public in BC and to identify ethical issues, possible rule revisions and appropriate practice guidelines and materials for lawyers.

For more on the Task Force and its most recent work, see “About the Law Society/Committees and Task Forces” on the Law Society website at [www.lawsociety.bc.ca](http://www.lawsociety.bc.ca).

*From the BC Court of Appeal  
J.L. Jordan, Registrar  
June 7, 2005*

## Lost court days



Between January and May 2005, the Court of Appeal has lost almost 30 court days sitting time as a result of adjournments, settlements and incorrect time estimates.

The practice of the registry is to contact all counsel at least three weeks in advance of the hearing of the appeal to confirm the time estimate, to ensure that all materials are filed and to confirm that the appeal will proceed as scheduled. At this time, any potential problems with the date, time scheduled or potential settlements should be communicated to the scheduler. The time for the hearing of each appeal is set aside specifically for that appeal. There are no other cases waiting to proceed if an appeal is adjourned at the last minute.

Unforeseeable circumstances, such as illness of counsel or death of a family member, are legitimate reasons for seeking last-minute adjournments. However, counsel’s lack of preparation, late filings or personal convenience is not.

The Court of Appeal Rules provide clear timelines for all steps in the appeal process. The parties setting the appeal for hearing must file a certificate of readiness. The present fixed date system for hearing appeals depends on the professional responsibility of counsel to see that appeals proceed in a timely way and that a certificate of readiness is honoured.

The court respectfully reminds the profession of these matters so that future sitting dates will not be lost. ✧





## The Equity Ombudsperson ... here to help



Anne Bhanu  
Chopra

Law firms have a duty to foster a professional work environment that promotes equal opportunities and prohibits discriminatory practices. When firms do not live up to that duty, there can be serious consequences for everyone.

The Law Society wants to help prevent

workplace harassment and other forms of discrimination and to encourage equitable workplace practices. That is why BC law firms are offered the services of an Equity Ombudsperson.

The Ombudsperson, Anne Bhanu Chopra, can help law firms prevent discrimination and promote a healthy work environment and she also offers assistance to any individual within a firm or legal workplace who may be facing discrimination and wishes to

canvass options for resolving the problem. Ms. Chopra is independent, treats all enquiries in confidence and reports only anonymous statistical data to the Law Society.

Law firm staff, law students, articling students, lawyers, human resource administrators and managing partners in law firms are all welcome to seek her help at no cost. You can reach Anne Chopra on her confidential, dedicated telephone line at **604 687-2344** or by email to [achopra@novuscom.net](mailto:achopra@novuscom.net). ✧

## Mark your calendars now

### September 23

Law Society Annual General Meeting  
*Vancouver Marriott Hotel*  
*Audioconference locations in Victoria, Nanaimo, Surrey, Cranbrook, Castlegar, Kelowna, Prince George, Prince Rupert, Kamloops and Fort St. John*

### October 14

Pacific Legal Technology Conference  
*Vancouver Convention and Exhibition Centre*  
*Register by September 16 for early bird discount*

### November 17

Bencher & Bar Dinner  
*Vancouver*  
*Watch for details this fall.* ✧

## Services to members

### Practice and ethics advice

Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. **Email:** [daveb@lsbc.org](mailto:daveb@lsbc.org) **Tel:** 604 605-5331 or 1-800-903-5300.

Contact **Felicia S. Folk**, Practice Advisor, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. All communications are strictly confidential, except in cases of trust fund shortages. **Tel:** 604 669-2533 or 1-800-903-5300 **Email:** [advisor@lsbc.org](mailto:advisor@lsbc.org).

Contact **Jack Olsen**, staff lawyer for the Ethics Committee, on ethical issues, interpretation of the *Professional Conduct Handbook* or matters for referral to the Committee. **Tel:** 604 443-5711 or 1-800-903-5300 **Email:** [jolsen@lsbc.org](mailto:jolsen@lsbc.org).

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**Interlock Member Assistance Program** – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society, and provided at no cost to individual BC lawyers and articled students and their immediate families: **Tel:** 604 431-8200 or 1-800-663-9099.

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**Lawyers Assistance Program (LAP)** – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers: **Tel:** 604 685-2171 or 1-888-685-2171.

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**Equity Ombudsperson** – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra:** **Tel:** 604 687-2344 **Email:** [achopra@novuscom.net](mailto:achopra@novuscom.net).



## Don't help non-lawyers in illegal practice

Lawyers have a professional obligation not to facilitate the unauthorized practice of law. This sounds straightforward, and for the most part it is, but there are pitfalls.

Non-lawyers who offer legal services directly to the public have been known to seek referrals from lawyers, some form of association with law firms, or even employment as law firm paralegals, as a way of legitimizing their own services. Unfortunately, there are occasions when lawyers have not fully appreciated the risks involved.

Law Society Rule 2-10 makes clear a lawyer's obligations:

### Unauthorized practice of law

**2-10** (1) A lawyer must not knowingly facilitate by any means the practice of law by a person who is not a practising lawyer or otherwise permitted to practise law under sections 15 to 17 of the Act.

(2) Without limiting subrule (1), a lawyer must not knowingly do any of the following:

(a) act as an agent or permit his or her name to be used or held out in any way that enables a person to engage in the unauthorized practice of law;

(b) send a process or other document to a person or do any other act that enables a person to engage in the unauthorized practice of law;

(c) open or maintain an office for the practice of law unless the office is under the personal and actual control and management of a practising lawyer.

### Beware of associations and space-sharing with non-lawyers

Lawyers are not permitted to share fees with non-lawyers (see Chapter 9,

Rule 6 of the *Professional Conduct Handbook*) and accordingly cannot enter into multi-disciplinary firms or associations with non-lawyers for shared profit.

Moreover, a lawyer should take care not to join any space-sharing arrangement or association with a non-lawyer that could cause any confusion among prospective clients or other lawyers or that could compromise client confidentiality.

Lawyers have an obligation not to facilitate the unauthorized practice of law by a non-lawyer under Rule 2-10. It is worth remembering that the practice of law includes offering legal services or making a representation that one is entitled to practise law. The risk of offending Rule 2-10 is real if the nature of a lawyer's relationship with a non-lawyer gives other people reason to believe that the non-lawyer or the non-lawyer's business entity is entitled to offer legal services.

A lawyer is not to carry on any business or occupation other than the practice of law in such a way that a person might reasonably find it difficult to determine whether in any matter the lawyer is acting as a lawyer or not: see Chapter 6, Rule 6 of the *Handbook*.

These restrictions are important for protection of the public, and a lawyer who fails to abide by them can face disciplinary consequences. A lawyer recently became the subject of a complaint and a conduct review for his role in facilitating unauthorized practice.

### Make referrals with care

Most lawyers take great care in referring someone to another lawyer, out of concern for their own reputation and high standards of client service. They do not want a client to be disappointed with the recommendation, nor do they want the other lawyer to be unhappy the referral was made.

If lawyer-to-lawyer referrals are handled with such care, what of referrals to a non-lawyer?

The first reason to hesitate is that very few non-lawyers are permitted to offer any legal services to the public for a fee. The *Legal Profession Act*, section 15, states that only lawyers are entitled to engage in practice, with some stated exceptions. The practice of law is defined in section 1 of the Act to mean practising law for a fee but excludes certain activities, including the lawful practice of a notary public.

Before you make any referral to a non-lawyer, be sure that you know the person, his or her qualifications and the permitted scope of practice. For example, understand the limits on notaries public (see section 18 of the *Notaries Act*) and on any lay persons who offer immigration services according to recent court decisions. Do not rely on what non-lawyers tell you they are permitted to do. The Law Society encounters instances of notaries public acting outside their permitted area of practice and in some cases not understanding the scope of their authority. In the case of lay persons purporting to offer legal services, not only do they lack qualifications, but often have no understanding of why they represent a danger to members of the public who rely on them.

If in doubt, feel free to contact the Law Society Unauthorized Practice Program.

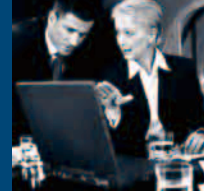
On the subject of referrals, it is also important to note that a lawyer cannot pay a fee to a notary public or other non-lawyer who refers a client to the lawyer (Chapter 9, Rule 2(a)).

### Know your employees

Lawyers should not set up any employment arrangement that gives a

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*continued on page 19*



## Unauthorized practice

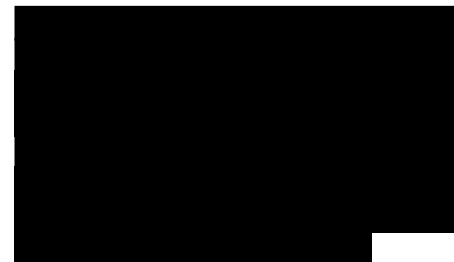
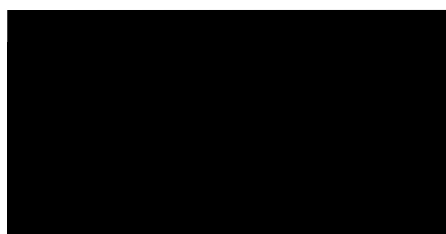
### Injunctions by consent

On application of the Law Society, the BC Supreme Court has ordered that **Raghibir Kaur Gill** (also known as **Ronnie Gill**) of Abbotsford, doing business as **LRS Solutions Inc.**, be permanently enjoined from appearing as counsel or advocate, drawing corporate documents, drawing wills, trust deeds, powers of attorney or estate documents, drawing documents for use in a judicial or extra-judicial proceeding or a proceeding under a statute, giving legal advice or agreeing to make a referral to a lawyer, or offering or holding herself out as qualified or entitled to provide any of these services for a fee: March 17, 2005 (entered June 7, 2005). Ms. Gill was also ordered to pay costs of the hearing.

The Court further ordered that **Elizabeth Foster** of Salmon Arm, doing

business as **Liz Foster Business Services**, be permanently enjoined from preparing documents for use in a judicial or extra-judicial proceeding or a proceeding under a statute, preparing wills, trust deeds, powers of attorney or estate documents, preparing documents relating to real or personal estate, giving legal advice or offering or holding herself out as qualified or entitled to provide any of these services for a fee: May 11, 2005 (entered May 13, 2005).

### Undertaking



### Appeal of contempt order dismissed

On June 20, 2005 the BC Court of Appeal dismissed the appeal of **Leonard Hanson** (a former BC lawyer who was disbarred in 1983) of a BC Supreme Court order of June 11, 2004 finding him in contempt of court. Mr. Hanson was found in contempt for having breached a court injunction that prohibited him from engaging in the practice of law for a fee. ✧

## Special Compensation Fund claims

The Special Compensation Fund, funded by all practising lawyers in BC, is available to compensate persons who suffer loss through the misappropriation or wrongful conversion of money or property by a BC lawyer acting in that capacity. (Note: The primary source of compensation for claims after May 1, 2004 is the trust protection coverage under Part B of the Compulsory Professional Liability Insurance Policy.)

The Special Compensation Fund Committee makes decisions on claims for payment from the Fund in accordance with section 31 of the *Legal Profession Act* and Law Society Rules 3-28 to 3-42. Rule 3-39 (1)(b) allows for publication to the profession of summaries of the written reasons of the Committee. These summaries are published with respect to paid claims in 2004, and

without identifying the claimants.

### Balraj Parmar

*Vancouver, BC*

*Called to the Bar: May 21, 1999*

*Suspended from practice pending hearing: November 30, 2000*

*Voluntarily ceased membership: January 1, 2001*

*Disbarred: October 3, 2002 (Discipline Case Digest 03/16)*

**Special Compensation Fund Committee decisions involving claims 20010028, 20010031, 20010033, 20010035, 20010029, 20010030 and 20010032**

Date of decisions: June 9, 2004  
Reports issued: September 9, 2004

Claimant: A  
*Payment approved: \$200*

Claimant B  
*Payment approved: \$500*

Claimant: C  
*Payment approved: \$500*  
*Balance of \$1,500 denied*

Claimant D  
*Payment approved: \$600*

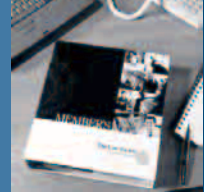
Claimant E  
*Claim of \$2,500 denied*

Claimant F  
*Claim of \$200 denied*

Claimant G  
*Claim of \$1,000 denied*

*continued on page 18*





## *Special Fund claims ... from page 17*

While a practising lawyer and employed at a law firm as an associate, Mr. Parmar acted for the claimants on different legal matters.

In 2001 the Law Society cited Mr. Parmar on various conduct matters, including wrongful conversion, false concoction of documents and misleading clients. Mr. Parmar subsequently ceased membership and was disbarred by a discipline hearing panel on October 3, 2002. As a result of the disbarment, other pending citations against Mr. Parmar relevant to these claims were rescinded.

**Client A:** In 1999 Client A retained Mr. Parmar to apply for citizenship for A's son. Mr. Parmar's firm received \$1,000 in trust from the client and Mr. Parmar received another \$200 in cash. Although Mr. Parmar was supposed to complete and submit a citizenship application, he failed to do so and repeatedly misled A on the status of the application. The Special Compensation Fund Committee accepted the claimant's evidence that Mr. Parmar had received the \$200 in cash and did not deposit this money to the firm's trust account. He instead misappropriated these funds and the client suffered a loss.

**Client B:** In October 2000 Mr. Parmar represented B with respect to a separation agreement. Mr. Parmar received \$500 from B and did not deposit this money to the firm's trust account. He misappropriated these funds and the client suffered a loss.

**Client C:** In September 2000 C retained Mr. Parmar to assist with an overseas sponsorship application for C's wife. C wrote a cheque for \$2,000, of which \$1,500 was for legal fees and \$500 for the sponsorship application fee. The payee portion of the cheque was left blank. Mr. Parmar received the cheque but did not deposit it to the firm trust account. Instead he had the

cheque cashed and paid to himself personally. Mr. Parmar misappropriated the funds after having performed little or no work for the client. The law firm that had employed Mr. Parmar, however, performed the work for C without charging fees. As a result, C's loss was limited to \$500 for payment of another application fee.

**Client D:** In January 2000 D retained Mr. Parmar to represent him in a divorce. Mr. Parmar misled D by telling him various lies and later producing a divorce certificate that was not genuine. D and his family provided Mr. Parmar with two cash payments totalling \$600. This money was not deposited to the firm trust account but was misappropriated by Mr. Parmar and the client suffered a loss.

The Committee found that, in each of these cases, Mr. Parmar had received funds in his capacity as a lawyer and had misappropriated the money. The Committee noted the finding of misappropriation was supported by various factors, including the fact that Mr. Parmar did little or no work on these files, failed to place the money in trust, failed to render an account and had a pattern of conduct that was characterized by dishonesty.

The Committee authorized payment of the claims of A, B, C and D as noted above, which was the loss suffered by each of them as a result of Mr. Parmar's misappropriations.

In representing clients E, F and G on different immigration matters, Mr. Parmar accepted funds from these clients that he did not deposit to the law firm's trust account. Instead, he misappropriated the funds, having performed little or no work on these client files, other than some work done on the file of G.

The Special Compensation Fund Committee found that, thanks to the law firm that employed Mr. Parmar performing pro bono work, each of these clients ultimately received the legal services expected and they suffered no

loss. As a result, the Committee denied these three claims.

## **Re: A Lawyer**

*The lawyer is not identified as all these claims were denied.*

## ***Special Compensation Fund Committee decisions involving claims 20010013, 20010016, 20010015, 20010185, 20010193, 20010184 and 20010182***

Decision date: March 3 and March 31 2004

Reports issued: June 17, 2004:

Claimant A

*Claim of \$98,000 denied*

Claimant B

*Claim of \$169,000 denied*

Claimant C

*Claim of \$15,000 plus interest denied*

Claimant D

*Claim of \$20,000 denied*

Claimant E

*Claim of \$25,000 denied*

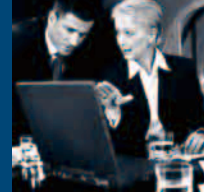
Claimant F

*Claim of \$9,000 denied*

Claimant G

*Claim of \$22,000 denied*

In 1997 client Z retained a BC lawyer with respect to whom these claims were later made. Z wished to raise funds by way of loans from individuals. Z told the lawyer and potential lenders that he (Z) stood to inherit millions of dollars under a will. One of the conditions for the inheritance was that Z had to show he was "responsible in his personal affairs." Z said the executor of the estate interpreted this to mean that Z had to be debt-free. Z said he wished to borrow money to pay off the existing loans, appear to be debt-free and receive his inheritance. He offered high rates of return, up to 100%, to others in return for short-term loans. The



Special Compensation Fund Committee referred to this as Z's "investment opportunity" scheme.

A, B, C, and D were individuals who, after learning of the investment scheme, provided loans to Z. Each of them provided all or part of their money to Z's lawyer for deposit to his trust account on behalf of Z. On instruction from Z, the lawyer subsequently paid the funds out to a third party, which the investors understood would happen. The lawyer maintained that he honestly believed the funds were used to repay Z's loans.

The Special Compensation Fund Committee was not satisfied that the lawyer had acted dishonestly or fraudulently in appropriating or converting the money. He paid out the funds in accordance with the instructions he received from Z and in a way that the claimants were told would happen.

Three other individuals (E, F and G) also made loans to Z, by providing their money to third parties who were to deliver the money to Z or Z's lawyer. The Special Compensation Fund Committee found no indication that Z's lawyer had received the funds from these investors in trust or at all. Because he did not at any time have their funds in his trust account or his possession, the lawyer could not have misappropriated or wrongfully converted them.

While the claimants had sustained losses in that they were not repaid under Z's investment opportunity as they expected to be, the Special Compensation Fund Committee found the

loss did not come about as a result of a misappropriation or wrongful conversion of the funds by the lawyer. The Committee accordingly denied all the claims.

## Re: Two Lawyers

*The lawyers are not identified as this claim was denied.*

### ***Special Compensation Fund Committee decisions involving claims 010001 and 010002***

Decision date: December 1, 2004  
Report issued January 28, 2005

Claimant A  
*Claim of \$50,853.88 denied*

In 1997, Lawyer X was retained by the executor of an estate to assist with the estate administration. An accounting was forwarded to the beneficiaries.

The claimant, one of the beneficiaries, would not consent to the accounting and she retained a lawyer to address the concern that the executor appeared to be purchasing an estate asset (a mobile home) in her personal capacity. The mobile home was sold by the estate for \$45,000 to a third party and then resold a few months later for \$80,710.

The passing of accounts was heard before a registrar in August 1999. Lawyer Y, of X's firm, appeared at the hearing. The registrar found that the executor did not perform some of her duties adequately, but had obtained an adequate amount in the sale of the

mobile home. The registrar determined that the executor should not have taken her fee without the written consent of all the beneficiaries or a passing of accounts. As a result, she should repay the fee. A master subsequently ordered the repayment of the executor's fees and payment of certain other amounts to the estate. The lawyers did so in compliance with the order.

The claimant made a complaint to the Law Society about the lawyers in 2000. She subsequently submitted a Special Compensation Fund claim in 2004. She acknowledged that the lawyers had complied with the order to repay funds to the estate but she claimed \$50,853.88: 1) \$39,651.19 for the estate's purported loss on the sale of the mobile home; 2) \$1,710 paid to the estate lawyers, whose work she said "damaged rather than advanced the interests of the estate"; and 3) \$9,492.69 to recover costs she claimed to have incurred to protect the estate assets for the beneficiaries.

The Special Compensation Fund Committee noted, with respect to the claim on the mobile home, that the claimant was unhappy with the amount of the sale of an estate asset, an amount that had been approved by a registrar. The claimant was dissatisfied with the work performed by the estate lawyers and she claimed for costs. The Committee found that, while the claimant may believe she had sustained a loss, it was not as a result of funds being misappropriated or wrongfully converted by a member of the Law Society. The Committee accordingly denied the claim. ♦

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### ***Illegal practice ... from page 16***

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non-lawyer employee scope to engage in the unauthorized practice of law.

The lawyer's duties to supervise staff are set out in Chapter 12 of the *Professional Conduct Handbook*. When

lawyers occasionally slip up on these requirements, it is often by failing to remember the nature of appropriate supervision, exacerbated by workload and other pressures.

While not a common scenario, there is also a risk that a non-lawyer may actively seek out employment in a law

firm as a means of learning some legal skills and moonlighting in an independent practice. Remember, your non-lawyer employees are not allowed to represent clients separately and have no right to run files on their own, inside your office or elsewhere. ♦

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